IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 434.

MARTIN L. SWEENEY, *Petitioner,*

v.

ELEANOR M. PATTERSON, Trading as the Washington Times-Herald, DREW PEARSON and ROBERT S. ALLEN.

PETITIONER'S REPLY BRIEF.

JOHN O'CONNOR,
Counsel for Petitioner.

WILLIAM F. CUSICK,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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I.

Respondents seek to persuade this Court to refuse a review of the decision of the Court of Appeals for the District of Columbia on the alleged ground that the question is not one of "general importance," and contemplates only the common law of the District of Columbia (Res. Br. p. 8).

This contention is a distinct reversal of the position maintained by these same counsel (exclusive of counsel for respondent Patterson) in the case of *Sweeney* v. *Schenectady Union Publishing Company*,[1] involving the *identical accusa-*

[1] 122 F. 2d 288 (C. C. A. 2d), aff'd. Sup. Ct., 86 L. Ed. 867, rehearing denied, 86 L. Ed. 1023.

tions as here in issue, and stemming from a republication of the article authored by respondents Pearson and Allen. The record in the *Schenectady Union* case discloses that it was there contended that this Court should "not hesitate to grant review where the asserted conflict is on a point vital to the democratic process itself" (Petition for Writ of Certiorari, p. 28). And, "Again we earnestly submit that the question is one of great public importance and worthy of review" (Petitioner's Reply Brief, p. 3); and the case involved "important societal and common law issues" and was "voluntarily taken on for decision by reason of its great importance" (Petition for Rehearing, p. 3); and, "The attorneys for defendants in many other Sweeney cases join in this petition for rehearing. Though the cases involve for the most part the law of states (and the District of Columbia) other than New York, the issues of policy urged here are implicit in all of them and the fundamental common law pattern is similar; a ruling by this Court would have great persuasive effect" (id. p. 5). And again, "The national significance of the instant case and the importance of the legal issues involved were recognized by this Court when it granted certiorari and are fully developed in our Petition for Certiorari, our main brief and our Petition for Rehearing" (Petitioner's Motion for Extension of Term, etc., p. 2).

In addition, the Court of Appeals for the District of Columbia recognized that the false charges imputed to petitioner were of "general importance" and surely of great public interest when in the instant case it said (R. 19):

> "Since Congress governs the country, all inhabitants and not merely the constituents of particular members, are vitally concerned in the political conduct and views of every member of Congress."

It is hardly consonant with the ideals of democratic justice to dismiss as lacking in "general importance," or involving only the common law of a given jurisdiction, charges of religious and racial hatred attributed to a na-

tional legislative officer in the performance of his official duties. That such accusations are of great and serious importance is hardly open to question.[2]

Moreover, it may be observed that the case under consideration concerns the actual authors of the challenged article—those primarily responsible for the subsequent publication of the false charges in a vast number of newspapers throughout the country (R. pp. 11-14). It presents a far cry from the situation existing in the *Schenectady Union* case, involving as it did, merely a republisher, lacking the culpable responsibility for setting in motion nationwide publication of the false charges.

II.

Respondents' further contention that the decision of the Court of Appeals does not conflict with decisions of this Court is clearly erroneous (Res. Br. p. 7). Aside from the unmistakable import of the affirmance by this Court of the decision of the Second Circuit Court of Appeals in the *Schenectady Union* case, we have pointed out at page 12 of our main brief the opinion of Mr. Justice Holmes in the *Peck* case[3] and at pages 19-22, the thorough analysis of libels on public officials by Mr. Justice Daniel in the *White* case,[4] both of which cases eminently support petitioner's position.

The principle that "liability is not a question of majority vote" as announced in the *Peck* case is not unsound or does it render petitioner's position vulnerable because the false charges were "written of a public official" (Res. Br. p. 7). Nor does the oft cited and relied on *White* decision

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[2] In accepting a citation from the National Conference of Christians and Jews, Mr. Chief Justice Hughes stated, "Rancor and bigotry, racial animosities and intolerance * * * are the deadly enemies of true democracy, more deadly than any external force because they undermine the very foundation of democratic effort." (Reported in the Press of December 28, 1940. See Washington Post of same date.)

[3] 214 U. S. 185.

[4] 44 U. S. 266.

lose any of its pungent reasoning or become less significant because of the decision in *Sacks* v. *Stecker,* 60 F. 2d 73, upon which respondents rely (Res. Br. p. 8). They neglect to state that the *Sacks* case grew out of an alleged libelous affidavit filed in a judicial proceeding and that the Second Circuit Court of Appeals carefully distinguished the case from the *White* case saying, "* * * there the defamatory words were not published in the course of judicial proceedings, but were contained in a petition addressed by the defendant to the President and the Secretary of the Treasury requesting the removal of a collector of the port."

It may be noted further that the same Circuit Court of Appeals in the later *Schenectady Union* case upheld petitioner's contentions.

Your petitioner again respectfully submits that the issues are of major public importance and that a review and decision by this Court is essential to effectively dispel the clouds of uncertainty presently shrouding a large and material field of the law.

Respectfully submitted,

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